

### **REMARKS**

In the Office action, the Examiner noted that claims 1-27 are pending in the application and that claims 5-11, 13, and 15-19 are rejected. Claims 1-4, 12, 14 and 20-27 are withdrawn from consideration. In view of the following discussion, the Applicant submits that none of the claims now pending in the application is obvious under the provisions of §103(a). At the outset the Applicant incorporates all of the arguments presented in the Response filed on October 30, 2005 into this instant Response and to address the Office Action mailed January 20, 2006.

### **The Rejections Under 35 USC §103**

The Examiner rejected claims 5-11, 13, and 15-19 under 35 U.S.C. §103(a) as being unpatentable over Time Life Books Recipes: the Cooking of India, page 43 in view of Powell, Brotsky and British Patent 18, 345. In addition, the Examiner indicated that a previously filed 132 Declaration was unpersuasive. The Applicants respectfully traverse the rejection.

In response the Examiner's comments in paragraph 7 of the Office Action of June 2, 2005, where the Examiner stated that:

*"Applicant's arguments filed October 3, 2005 and the accompanying 132 Declaration have been fully considered but they are not persuasive. The declaration is incomplete since it does not indicate the specific composition (components and amounts) used for the "Clean-a-Meal" product and for "The Cooking of India" recipe. As a result, it cannot be determined if Applicant's comparative evidence is actually commensurate in scope with what is claimed by Applicant and disclosed by the primary reference. A further declaration is needed to resolve these issues."*

Therefore, Applicant has submitted herein a new 132 Declaration of John Bonnes dated June 1, 2006. He explains the formula of the primary reference which was tested, as derived from the reference. He explained that it contained 4 out of 5 materials in the substance of the claimed subject matter of the present invention. He stated that each set of the materials were mixed together until a homogenous solution was obtained and then used to apply to food consistent with what was tested of the present invention.

Mr. Bonnes' tests compared closest prior art reference, namely, The Cooking of India reference, with the subject matter of the instant application. Mr. Bonnes documents



the results of those tests and the compositions tested in the Declaration. Those results clearly show a significant difference in the bactericide/contaminants test results produced by The Cooking of India, when compared to the bactericide/contaminants test results of Applicant's invention.

For example, on page 1 of the test results of the prior 132 Declaration of John Bonnes, the Cooking of India produced an average (over 5 test samples) of a 44.1% drop in *Listeria*, however, there is an average of a 97.5% drop in *Listeria* using the Applicant's invention. As apparent from the Declaration, the Applicant has conducted the tests for numerous types of bacteria/contaminants. For brevity, the Applicant will not list all of the tests conducted and requests that the Examiner review the newly submitted 132 Declaration for those bacteria/contaminants tested and the results thereof. The Applicant submits that these tests are proof of secondary considerations.

For example, there are unexpected results in using this invention and there is a much broader spectrum of microbiological control properties stemming from the current invention. The current invention provides several factors to produce an uninhabitable environment for bacteria with the combination of a low pH and the absorption of the much needed oxygen. The results of using this invention greatly surpasses the use of any of the prior art methods. In addition, there is a long felt but unsatisfied need for treatment of food to extend self life without compromising the taste, with such elements which have been long available. Further, Examiner's conclusion of obviousness may be based on improper hindsight reasoning.

Respectfully there is a lack of suggestion in the prior art of the desirability of combining references: The Cooking of India in view of Powell, Brotsky and British patent 18,345. In addition, even if Powell, Brotsky, and British Patent 18345 were combined there is nothing which would suggest that this combination would produce the results demonstrated by the Applicant's invention.

Lastly, since this invention deals with food, taste is a very important consideration. The use of the prior art in order to obtain bacteria control results anywhere near the current invention will necessarily be in such concentrations which interfere with a person's enjoyment of that particular food. The Applicant requests reconsideration and withdrawal of the obviousness rejection of the Claims.



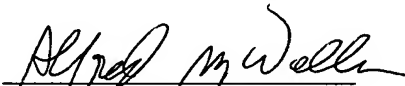
**Conclusion**

Thus, Applicant submits that none of the claims presently in the application are obvious under the provisions of 35 U.S.C. §103(a). Consequently, the Applicant believes that all these claims are presently in condition for allowance. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring the issuance of a final action in any of the claims now pending in the application, it is requested that the Examiner telephone (631) 361-8737 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

Dated: June 20, 2006

  
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Date: June 20, 2006

  
Alfred M. Walker